



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for April 14, 2023

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COURT DECISIONS

NONPRECEDENTIAL:

Alvarez v. Secretary Xavier Becerra, [No. 21-2317](#) (4th Cir. Apr. 12, 2023). The Court affirmed a district court's dismissal for lack of standing of the appellant's civil action alleging that the Department of Health and Human Services' motions to dismiss his Board appeal without prejudice due to the Supreme Court's decision in *Lucia v. Securities and Exchange Commission*, 138 S. Ct. 2044 (2018), violated his due process rights.

Skrettas v. Department of Veterans Affairs, [2022-2075](#) (Fed. Cir. Apr. 11, 2023) (MSPB Docket No. CH-1221-20-0549-W-1). The Court affirmed the Board's decision denying the petitioner corrective action in part in his whistleblower reprisal appeal, finding unsupported the petitioner's claims that agency witnesses lacked credibility and that the Board's finding that a purported comparator and the petitioner were differently situated was supported by substantial evidence.

McLaughlin v. Merit Systems Protection Board, [2022-1589](#) (Fed. Cir. Apr. 7, 2023) (MSPB Docket No. DC-1221-22-0007-W-1). The Court

affirmed the Board's dismissal of the petitioner's Individual Right of Action (IRA) appeal for lack of jurisdiction because the petitioner's disclosures of the agency's alleged violations of the Federal Rules of Civil Procedure in her Title VII civil suit constituted "trivial violations" or "minor or inadvertent miscues" and were thus outside the statutory definition of whistleblowing. In addition, the court found that the appellant's disclosures, made in the context of a Title VII case, fell within the scope of 5 U.S.C. § 2302(b)(9)(A)(ii) and were thus outside the Board's IRA jurisdiction under 5 U.S.C. § 1221(a).

Hammond v. Merit Systems Protection Board, [2023-1079](#), [2023-1080](#) (Fed. Cir. Apr. 7, 2023) (MSPB Docket Nos. DA-3330-18-0237-C-1, DA-1221-19-0492-W-1). The Court affirmed the Board's dismissals of the petitioner's compliance and whistleblower reprisal appeals based on a global settlement agreement.

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